

## KANSAS JUVENILE JUSTICE CODE

### SECTION 2

#### CHAPTER 38—MINORS ARTICLE 23—REVISED KANSAS JUVENILE JUSTICE CODE

**38-2301. Citation; goals of the code; policy development.** This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (a) Protect public safety; (b) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs; (c) be community based to the greatest extent possible; (d) be family centered when appropriate; (e) facilitate efficient and effective cooperation, coordination and collaboration among agencies of the local, state and federal government; (f) be outcome based, allowing for the effective and accurate assessment of program performance; (g) be cost-effectively implemented and administered to utilize resources wisely; (h) encourage the recruitment and retention of well-qualified, highly trained professionals to staff all components of the system; (i) appropriately reflect community norms and public priorities; and (j) encourage public and private partnerships to address community risk factors.

**History:** L. 2006, ch. 169, § 1; Jan. 1, 2007.

**Source or Prior Law:**  
38-1601.

**38-2302. Definitions.** As used in this code, unless the context otherwise requires:

(a) “Commissioner” means the commissioner of juvenile justice.

(b) “Conditional release” means release from a term of commitment in a juvenile correctional facility for an aftercare term pursuant to K.S.A. 2006 Supp. 38-2369, and amendments thereto, under conditions established by the commissioner.

(c) “Court-appointed special advocate” means a responsible adult, other than an attorney appointed pursuant to K.S.A. 2006 Supp. 38-2306, and

amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2006 Supp. 38-2307, and amendments thereto, in a proceeding pursuant to this code.

(d) “Educational institution” means all schools at the elementary and secondary levels.

(e) “Educator” means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsections (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(f) “Institution” means the following institutions: the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, the Topeka juvenile correctional facility and the Kansas juvenile correctional complex.

(g) “Investigator” means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

(h) “Jail” means: (1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(i) “Juvenile” means a person to whom one or more of the following applies, the person: (1) Is 10 or more years of age but less than 18 years of age; (2) is alleged to be a juvenile offender; or (3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.

(j) “Juvenile correctional facility” means a facility operated by the commissioner for the commitment of juvenile offenders.

(k) “Juvenile corrections officer” means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the

## KANSAS JUVENILE JUSTICE CODE

commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(l) “Juvenile detention facility” means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.

(m) “Juvenile intake and assessment worker” means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(n) “Juvenile offender” means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;

(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(3) a person under 18 years of age who previously has been:

(A) Convicted as an adult under the Kansas criminal code;

(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2006 Supp. 38-2364, and amendments thereto; or

(C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 2006 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(o) “Law enforcement officer” means any person who by virtue of that person’s office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(p) “Parent” when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.

(q) “Risk assessment tool” means an instrument administered to juveniles which delivers a score, or group of scores, describing, but not limited to describing, the juvenile’s potential risk to the community.

(r) “Sanctions house” means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(s) “Warrant” means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(t) “Youth residential facility” means any home, foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 2006, ch. 169, § 2; Jan. 1, 2007.

**Source or Prior Law:**  
38-1602.

**38-2303. Time limitations.** (a) Proceedings under this code involving acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401 or 21-3402, and amendments thereto, may be commenced at any time.

(b) Except as provided by subsections (d) and (f), a proceeding under this code for any act committed by a juvenile which, if committed by an adult, would constitute a violation of any of the following statutes shall be commenced within five years after its commission if the victim is less than 16 years of age: (1) Indecent liberties with a child as defined in K.S.A. 21-3503, and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and amendments thereto; (3) lewd and lascivious behavior as defined in K.S.A. 21-3508, and amendments thereto; (4) indecent

## KANSAS JUVENILE JUSTICE CODE

solicitation of a child as defined in K.S.A. 21-3510, and amendments thereto; (5) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, and amendments thereto; (6) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (7) unlawful voluntary sexual relations as defined in K.S.A. 21-3522, and amendments thereto; or (8) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto.

(c) Except as provided by subsections (d) and (f), a prosecution for rape, as defined in K.S.A. 21-3502, and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto, shall be commenced within five years after its commission.

(d)(1) Except as provided in subsection (f), a prosecution for any offense provided in subsection (b) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, shall be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(2) For the purposes of this subsection, “DNA” means deoxyribonucleic acid.

(e) Except as provided by subsection (f), proceedings under this code not governed by subsections (a), (b), (c) or (d) shall be commenced within two years after the act giving rise to the proceedings is committed.

(f) The period within which the proceedings must be commenced shall not include any period in which:

- (1) The accused is absent from the state;
- (2) the accused is so concealed within the state that process cannot be served upon the accused;
- (3) the fact of the offense is concealed; or
- (4) whether or not the fact of the offense is concealed by the active act or conduct of the accused, there is substantial competent evidence to believe two or more of the following factors are present: (A) The victim was a child under 15 years of age at the time of the offense; (B) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted an offense; (C) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the offense whether or not the parent or other legal authority is the accused; and (D) there is substantial competent

expert testimony indicating the victim psychologically repressed such victim’s memory of the fact of the offense, and in the expert’s professional opinion the recall of such memory is accurate, free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information; but in no event may a proceeding be commenced as provided in subsection (f)(4) later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the alleged juvenile offender committed similar acts against other persons or evidence of contemporaneous physical manifestations of the offense. Parent or other legal authority shall include, but not be limited to, natural and stepparents, grandparents, aunts, uncles or siblings.

**History:** L. 2006, ch. 169, § 3; Jan. 1, 2007.

**Source or Prior Law:**  
38-1603.

**(Effective 05/24/07, see SB 166, sec. 7)**

**38-2304. Jurisdiction; presumption of age of juvenile; placement with department of social and rehabilitation services or juvenile justice authority; costs.** (a) Except as provided in K.S.A. 2006 Supp. 38-2347, and amendments thereto, proceedings concerning a juvenile shall be governed by the provisions of this code.

(b) The district court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this code, unless the contrary is proved.

(d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

- (1) The complaint is dismissed;
- (2) the juvenile is adjudicated not guilty at trial;
- (3) the juvenile, after being adjudicated guilty and sentenced:
  - (i) Successfully completes the term of probation or order of assignment to community corrections;
  - (ii) is discharged by the commissioner pursuant to K.S.A. 2006 Supp. 38-2376, and amendments thereto; or

## KANSAS JUVENILE JUSTICE CODE

(iii) reaches the juveniles 21st birthday and no exceptions apply that extend jurisdiction beyond age 21; or

(4) the court terminates jurisdiction.

(e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd birthday if either or both of the following conditions apply:

(1) The juvenile offender is sentenced pursuant to K.S.A. 2006 Supp. 38-2369, and amendments thereto, and the term of the sentence including successful completion of aftercare extends beyond the juvenile offender's 21st birthday; or

(2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile justice code.

(f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile offender's continuing responsibility to pay restitution ordered.

(g)(1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary of social and rehabilitation services under the Kansas code for care of children, the sentencing court may order the continued placement of the juvenile offender as a child in need of care unless the offender was adjudicated for a felony or a second or subsequent misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which, in the best interest of the juvenile offender, require that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.

(2) If a placement with the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If the juvenile offender is placed in the custody of the juvenile justice authority, the secretary of

social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing other services provided by the department of social and rehabilitation services or any other state agency if the juvenile offender is otherwise eligible for the services.

**History:** L. 2006, ch. 169, § 4; Jan. 1, 2007.

**Source or Prior Law:**

38-1604, 38-1615, 38-1667.

**38-2305. Venue.** (a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. Such documents shall be sent for purposes of notification and shall not constitute original court documents. The adjudicating court shall also send to the sentencing court a complete copy of the official and social files in the case by mail within five working days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made if the adjudicating judge, upon motion by any person authorized to appeal, finds that it is in the interest of justice.

**History:** L. 2006, ch. 169, § 5; Jan. 1, 2007.

**Source or Prior Law:**

38-1605.

**38-2306. Right to an attorney.** (a) *Appointment of attorney to represent juvenile.* A juvenile is entitled to have the assistance of an attorney at every stage of the proceedings. If a juvenile appears before any court without an attorney, the court shall inform

## KANSAS JUVENILE JUSTICE CODE

the juvenile and the juvenile's parent of the right to employ an attorney. Upon failure to retain an attorney, the court shall appoint an attorney to represent the juvenile. The expense of the appointed attorney may be assessed to the juvenile, the parent, or both, as part of the expenses of the case.

(b) *Continuation of representation.* An attorney appointed for a juvenile shall continue to represent the juvenile at all subsequent court hearings in the proceeding under this code, including appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(c) *Attorney fees.* An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 2006 Supp. 38-2314, and amendments thereto.

**History:** L. 2006, ch. 169, § 6; Jan. 1, 2007.

**Source or Prior Law:**  
38-1606.

**38-2307. Court-appointed special advocate; immunity from liability; supreme court rules.** (a) In addition to the attorney appointed pursuant to K.S.A. 2006 Supp. 38-2306, and amendments thereto, the court at any stage of a proceeding pursuant to this code may appoint a volunteer court-appointed special advocate for a juvenile who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the juvenile and assist the juvenile in obtaining a permanent, safe and appropriate placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court.

(b) Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

(c) The supreme court shall promulgate rules governing court-appointed special advocate programs related to proceedings in the district courts pursuant to this code.

**History:** L. 2006, ch. 169, § 7; Jan. 1, 2007.

**Source or Prior law:**  
38-1606a.

**38-2308. Local citizen review board; duties and powers.** (a) The local citizen review board created

pursuant to K.S.A. 2006 Supp. 38-2207, and amendments thereto, shall have the duty, authority and power to:

(1) Review each case of a child who is a juvenile offender referred by the judge, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been toward rehabilitation for the juvenile offender; and

(3) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the local citizen review board may take place any time after adjudication for a juvenile offender. A review shall occur within six months after the initial disposition hearing.

(c) The local citizen review board shall review each referred case at least once each year.

(d) The judge shall consider the local citizen review board recommendations in issuing a sentence pursuant to K.S.A. 2006 Supp. 38-2361, and amendments thereto.

(e) Three members of the local citizen review board must be present to review a case.

(f) The court shall provide a place for the reviews to be held. The local citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

**History:** L. 2006, ch. 169, § 8; Jan. 1, 2007.

**Source or Prior Law:**  
38-1813.

**38-2309. Court records; disclosure; preservation of records.** (a) *Official file.* The official file of proceedings pursuant to this code shall consist of the complaint, process, service of process, orders, writs and journal entries reflecting hearings held, judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(b) The official file shall be open for public inspection, unless the judge determines that opening the official file for public inspection is not in the best interests of a juvenile who is less than 14 years of age. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or alleged victim of any sex offense from voluntarily

## KANSAS JUVENILE JUSTICE CODE

disclosing such victim's identity. An official file closed pursuant to this section and information identifying the victim or alleged victim of any sex offense shall be disclosed only to the following:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) any individual or any public or private agency or institution: (A) Having custody of the juvenile under court order; or (B) providing educational, medical or mental health services to the juvenile;

(4) the juvenile's court appointed special advocate;

(5) any placement provider or potential placement provider as determined by the commissioner or court services officer;

(6) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(7) the Kansas racing commission, upon written request of the commission chairperson, for the purpose provided by K.S.A. 74-8804, and amendments thereto, except that information identifying the victim or alleged victim of any sex offense shall not be disclosed pursuant to this subsection;

(8) juvenile intake and assessment workers;

(9) the commissioner; and

(10) any other person when authorized by a court order, subject to any conditions imposed by the order.

(c) *Social file.* Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by attorneys for the parties, juvenile intake and assessment workers, court appointed special advocates and juvenile community corrections officers or upon order of a judge of the district court or appellate court. The reports shall not be further disclosed without approval of the court or by being presented as admissible evidence.

(d) *Preservation of records.* The Kansas state historical society shall be allowed to take possession for preservation in the state archives of any court records related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code whenever such records otherwise would be destroyed. The Kansas state historical society shall make available for public inspection any unexpunged docket entry or official file in its custody concerning any juvenile 14 or more years of age at the time an offense is alleged to have been

committed by the juvenile. No other such records in the custody of the Kansas state historical society shall be disclosed directly or indirectly to anyone for 70 years after creation of the records, except as provided in subsections (b) and (c). A judge of the district court may allow inspection for research purposes of any court records in the custody of the Kansas state historical society related to proceedings under the Kansas juvenile justice code or the revised Kansas juvenile justice code.

(e) Relevant information, reports and records, shall be made available to the department of corrections upon request, and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

**History:** L. 2006, ch. 169, § 9; Jan. 1, 2007.

**Source or Prior Law:**  
38-1607.

**38-2310. Records of law enforcement officers, agencies and municipal courts concerning certain juveniles; disclosure.** (a) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

(1) The judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) the juvenile's court appointed special advocate, any officer of a public or private agency or institution or any individual having custody of a juvenile under court order or providing educational, medical or mental health services to a juvenile;

(5) any educational institution, to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator, to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys, or their staff, when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701, and amendments thereto, for use only as a part of the juvenile offender information system

## KANSAS JUVENILE JUSTICE CODE

established under K.S.A. 2006 Supp. 38-2326, and amendments thereto;

- (9) juvenile intake and assessment workers;
- (10) the juvenile justice authority;
- (11) juvenile community corrections officers;
- (12) any other person when authorized by a court order, subject to any conditions imposed by the order; and
- (13) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning an offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records, shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juveniles shall be confidential, and shall not be disclosed except as provided by statutory law and rules and regulations promulgated by the commissioner thereunder.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified by the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

(A) A person licensed to practice the healing arts who has before that person a juvenile whom the person reasonably suspects may be abused or neglected;

(B) a court-appointed special advocate for a juvenile or an agency having the legal responsibility or authorization to care for, treat or supervise a juvenile;

(C) a parent or other person responsible for the welfare of a juvenile, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the juvenile, the attorney and a guardian *ad litem*, if any, for such juvenile;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treating physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the Kansas code for care of children or the revised Kansas juvenile justice code, whichever is applicable;

(G) members of a multidisciplinary team under this code;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a juvenile who is the subject of a report or record of child abuse or neglect, specifically including the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board pursuant to K.S.A. 2006 Supp. 38-2207, and amendments thereto;

(K) an educational institution to the extent necessary to enable such institution to provide the safest possible environment for pupils and employees of the institution;

## KANSAS JUVENILE JUSTICE CODE

(L) any educator to the extent necessary for the protection of the educator and pupils; and

(M) any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

**History:** L. 2006, ch. 169, § 10; Jan. 1, 2007.

**Source or Prior Law:**  
38-1608

### **38-2311. Records of diagnostic, treatment or medical records concerning juveniles; penalties.**

(a) When the court has exercised jurisdiction over any juvenile the diagnostic, treatment or medical records shall be privileged and shall not be disclosed except:

(1) Upon the written consent of the former juvenile or, if the juvenile is under 18 years of age, by the parent of the juvenile;

(2) upon a determination by the head of the treatment facility, who has the records, that disclosure is necessary for the further treatment of the juvenile;

(3) when any court having jurisdiction of the juvenile orders disclosure;

(4) when authorized by K.S.A. 2006 Supp. 38-2316, and amendments thereto;

(5) when requested orally or in writing by any attorney representing the juvenile, but the records shall not be further disclosed by the attorney unless approved by the court or presented as admissible evidence;

(6) upon a written request of a juvenile intake and assessment worker in regard to a juvenile when the information is needed for screening and assessment purposes or placement decisions, but the records shall not be further disclosed by the worker unless approved by the court;

(7) upon a determination by the juvenile justice authority that disclosure of the records is necessary for further treatment of the juvenile; or

(8) upon a determination by the department of corrections that disclosure of the records is necessary for further treatment of the juvenile.

(b) Intentional violation of this section is a class C nonperson misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile established by attorney-client, physician-patient, psychologist-client or social worker-client privileges.

(d) Relevant information, reports and records shall be made available to the department of corrections

upon request and a showing that the juvenile has been placed in the custody of the secretary of corrections.

**History:** L. 2006, ch. 169, § 11; Jan. 1, 2007.

**Source or Prior Law:**  
38-1609

**38-2312. Expungement of records.** (a) Except as provided in subsection (b), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, and amendments thereto, murder in the first degree, K.S.A. 21-3402, and amendments thereto, murder in the second degree, K.S.A. 21-3403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3404, and amendments thereto, involuntary manslaughter, K.S.A. 21-3439, and amendments thereto, capital murder, K.S.A. 21-3442, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3502, and amendments thereto, rape, K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3504, and amendments thereto, aggravated indecent liberties with a child, K.S.A. 21-3506, and amendments thereto, aggravated criminal sodomy, K.S.A. 21-3510, and amendments thereto, indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto, aggravated indecent solicitation of a child, K.S.A. 21-3516, and amendments thereto, sexual exploitation, K.S.A. 21-3603, and amendments thereto, aggravated incest, K.S.A. 21-3608, and amendments thereto, endangering a child, K.S.A. 21-3609, and amendments thereto, abuse of a child, or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3)



## KANSAS JUVENILE JUSTICE CODE

the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(d)(1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(B) since the final discharge of the juvenile, the juvenile has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) The court may require that all court costs, fees and restitution shall be paid.

(e) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(f) Copies of any order made pursuant to subsection (a) or (c) shall be sent to each public officer and agency in the county having possession of any records or files ordered to be expunged. If the officer or agency fails to comply with the order within a reasonable time after its receipt, the officer or agency may be adjudged in contempt of court and punished accordingly.

(g) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(h) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(i) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(j) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in

## KANSAS JUVENILE JUSTICE CODE

sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission; or

(8) the Kansas sentencing commission.

**History:** L. 2006, ch. 169, § 12; Jan. 1, 2007.

**Source or Prior Law:**  
38-1610.

(Effective 03/29/07 see HB 2074)

### **38-2313. Fingerprints and photographs.** (a)

Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of a juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) after adjudication, fingerprints and photographs shall be taken of all juvenile offenders adjudicated because of commission of an offense which if committed by an adult would constitute the commission of a felony or any of the following misdemeanor violations: K.S.A. 21-3424, and amendments thereto, criminal restraint, when the victim is less than 18 years of age, subsection (a)(1) of K.S.A. 21-3503, and amendments thereto, indecent liberties with a child, K.S.A. 21-3507, and amendments thereto, adultery, when one of the parties involved is less than 18 years of age, K.S.A. 21-3508, and amendments thereto, lewd and lascivious behavior, subsection (b)(1) of K.S.A. 21-3513, and amendments thereto, promoting prostitution, when one of the parties involved is less than 18 years of age, K.S.A. 21-3517, and amendments thereto, sexual battery, and including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a violation of any of the offenses specified in this subsection;

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501, and amendments thereto, if the juvenile has been prosecuted as an adult pursuant to K.S.A. 2006 Supp. 38-2347, and amendments thereto; and

(4) fingerprints or photographs may be taken of any juvenile admitted to a juvenile correctional facility.

(b) Fingerprints and photographs taken under subsection (a)(1) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under

subsections (a)(2), (a)(3) and (a)(4) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to a state or federal repository if authorized by a judge of the district court having jurisdiction; and

(2) fingerprints or photographs taken under subsections (a)(2), (a)(3) and (a)(4) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 2006 Supp. 38-2325, and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of an alleged juvenile offender taken under the provisions of subsection (a)(2) of K.S.A. 38-1611, prior to its repeal, may be sent to a state or federal repository on or before December 31, 2006.

(f) Any law enforcement agency that willfully fails to submit any fingerprints or photographs required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

**History:** L. 2006, ch. 169, § 13; Jan. 1, 2007.

**Source or Prior Law:**  
38-1611.

**38-2314. Docket fee and expenses.** (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided by this section, shall be \$25. Only one docket fee shall be assessed in each case.

## KANSAS JUVENILE JUSTICE CODE

(b) *Expenses.* The expenses for proceedings under this code, including fees and mileage allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial sentencing hearing and may be assessed against the juvenile or the parent of the juvenile. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be waived or assessed against the juvenile or a parent of the juvenile. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery.

(3) *Prohibited assessment.* Docket fees or expenses shall not be assessed against the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state.

(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportionate share of the expenses is collected by the receiving court. Unless otherwise ordered by the court, all amounts collected shall first be applied toward payment of restitution, then toward the payment of the docket fee.

**History:** L. 2006, ch. 169, § 14; Jan. 1, 2007.

**Source or Prior Law:**  
38-1613.

**38-2315. Expense of care and custody of juvenile.** (a) *How paid.* (1) If a juvenile, subject to this code, is not eligible for assistance under K.S.A. 39-709, and amendments thereto, expenses for the care and custody of the juvenile shall be paid out of

the general fund of the county in which the proceedings are initiated. Upon entry of a written order transferring venue pursuant to K.S.A. 2006 Supp. 38-2305, and amendments thereto, expenses shall be paid by the receiving county. For the purpose of this section, a juvenile who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are initiated.

(2) When the custody of a juvenile is awarded to the commissioner, the expenses for the care and custody of the juvenile from the date of custody forward shall not be paid out of the county general fund, except as provided in subsection (d) or K.S.A. 2006 Supp. 38-2373, and amendments thereto. In no event shall the payment authorized by this subsection exceed the state approved rate.

(3) Nothing in this section shall be construed to mean that any person shall be relieved of the legal responsibility to support a juvenile.

(b) *Reimbursement to county general fund.* (1) When expenses for the care and custody of a juvenile subject to this code have been paid out of the county general fund of any county in this state, the court may assess the expenses to the person who by law is liable to maintain, care for or support the juvenile and shall inform the person assessed the expenses of such person's right to a hearing. If a hearing is requested, it shall be granted and the court shall fix a time and place for hearing on the question of requiring payment or reimbursement of all or part of the expenses by a person who by law is liable to maintain, care for or support the juvenile.

(2) After notice to the person who by law is liable to maintain, care for or support the juvenile, the court, if requested, may hear and dispose of the matter and may enter an order relating to payment of expenses for care and custody of the juvenile. If the person willfully fails or refuses to pay the sum, the person may be adjudged in contempt of court and punished accordingly.

(3) Any county which makes payment to maintain, care for or support a juvenile subject to this code, may bring a separate action against a person who by law is liable to maintain, care for or support such juvenile for the reimbursement of expenses paid out of the county general fund for the care and custody of the juvenile.

(c) *Reimbursement to the commissioner.* When expenses for the care and custody of a juvenile subject to this code have been paid by the

commissioner, the commissioner may recover the expenses as provided by law from any person who by law is liable to maintain, care for or support the juvenile. The commissioner shall have the power to compromise and settle any claim due or any amount claimed to be due to the commissioner from any person who by law is liable to maintain, care for or support the juvenile. The commissioner may contract with a state agency, contract with an individual or hire personnel to collect the reimbursements required under this subsection.

(d) *Interlocal agreements.* When a county has made an interlocal agreement to maintain, care for or support alleged juvenile offenders or juvenile offenders who are residents of another county and such other county is a party to the interlocal agreement with the county which performs the actual maintenance, care and support of the alleged juvenile offender or juvenile offender, such county of residence may pay from its county general fund to the other county whatever amount is agreed upon in the interlocal agreement irrespective of any amount paid or to be paid by the juvenile justice authority. The juvenile justice authority shall not diminish the amount it would otherwise reimburse any such county for maintaining, caring for and supporting any such juvenile because of any payment under such an interlocal agreement.

**History:** L. 2006, ch. 169, § 15; Jan. 1, 2007.

**Source or Prior Law:**  
38-1616.

**38-2316. Health services.** (a) *Physical care and treatment.* (1) When the health or condition of a juvenile who is subject to the jurisdiction of the court requires it, the court may consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records.

(2) When the health or condition of a juvenile requires it and the juvenile has been placed in the custody of the commissioner or a person other than a parent or placed in or committed to a facility, the custodian or an agent designated by the custodian shall be the personal representative for the purpose of consenting to disclosure of otherwise protected health information and have authority to consent to hospital, medical, surgical or dental treatment or procedures including the release and inspection of medical or dental records, subject to terms and conditions the court considers proper. A juvenile or

parent of a juvenile who is opposed to certain medical procedures authorized by this section may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may authorize or limit the performance of the proposed treatment subject to the terms and conditions the court considers proper. The provisions of this subsection shall also apply to juvenile felons, as defined in K.S.A. 38-16,112, prior to its repeal, and juveniles in the custody of the department of corrections pursuant to K.S.A. 2006 Supp. 38-2366, and amendments thereto, who have been placed in a juvenile correctional facility pursuant to K.S.A. 75-5206, and amendments thereto.

(3) Any health care provider, who in good faith renders hospital, medical, surgical or dental care or treatment to any juvenile after a consent has been obtained as authorized by this section, shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

(4) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to provide care and support for a juvenile.

(b) *Mental care and treatment.* If it is brought to the court's attention, while the court is exercising jurisdiction over a juvenile under this code, that the juvenile may be a mentally ill person as defined in K.S.A. 59-2946, and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 59-2957, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons; or

(2) authorize the juvenile to seek voluntary admission to a treatment facility as provided in K.S.A. 59-2949, and amendments thereto.

The application to determine whether the juvenile is a mentally ill person may be filed in the same proceedings as the petition alleging the juvenile to be a juvenile offender or may be brought in separate proceedings. In either event, the court may enter an order staying any further proceedings under this code until all proceedings have been concluded under the care and treatment act for mentally ill persons.

**History:** L. 2006, ch. 169, § 16; Jan. 1, 2007.

## KANSAS JUVENILE JUSTICE CODE

**Source or Prior Law:**  
38-1614.

**38-2317. Infectious disease testing and counseling; disclosure of results; penalties.** (a) As used in this section:

(1) “Adjudicated person” means a person found to be a juvenile offender or a person found not to be a juvenile offender because of mental disease or defect.

(2) “Laboratory confirmation of HIV or hepatitis B infection” means positive test results from a confirmation test approved by the secretary of health and environment.

(3) “Sexual act” means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) “Test for HIV or hepatitis B infection” means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome or hepatitis B.

(5) “Body fluids” means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV or hepatitis B infection and counseling and shall cause each alleged victim of the offense and if the alleged victim is a minor, the parent, if any, to be notified that testing for HIV or hepatitis B infection and counseling is available.

(c) If the victim of the offense or if the victim is a minor, if the victim’s parent requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that such person has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person charged with the offense to submit to infectious disease tests as defined in K.S.A. 65-6001, and amendments thereto.

(d) For any offense by an adjudicated person which the court determines, from the facts of the case, involved or was likely to have involved the transmission of body fluids from one person to another or involved a sexual act, the court: (1) May order the adjudicated person to submit to a test for HIV or hepatitis B infection; or (2) shall order the adjudicated person to submit to a test for HIV or hepatitis B infection if a victim of the offense, or the parent or legal guardian of the victim if the victim is a minor, requests the court to make such order. If a test for HIV or hepatitis B infection is ordered under this subsection, a victim who is an adult shall designate a health care provider or counselor to receive the information on behalf of the victim. If a victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive the information. If the test results in a negative reaction, the court shall order the adjudicated person to submit to another test for HIV or hepatitis B infection six months after the first test was administered.

(e) The results of any test for HIV or hepatitis B infection ordered under this section shall be disclosed to the court which ordered the test, to the adjudicated person, or the parent or legal guardian of the adjudicated person, and to each person designated under subsection (d) by a victim or by the parent or legal guardian of a victim. If a test for HIV or hepatitis B infection ordered under this section results in a laboratory confirmation of HIV or hepatitis B infection, the results shall be reported to the secretary of health and environment and to: (1) The commissioner of juvenile justice, in the case of a juvenile offender or a person not adjudicated because of mental disease or defect, for inclusion in such offender’s or person’s medical file; or (2) the secretary of corrections, in the case of a person under 16 years of age who has been convicted as an adult, for inclusion in such person’s medical file. The secretary of health and environment shall provide to each victim of the crime or sexual act, at the option of such victim, counseling regarding the human immunodeficiency virus and hepatitis B, testing for HIV or hepatitis B infection in accordance with K.S.A. 65-6001 et seq., and amendments thereto, and referral for appropriate health care and services.

(f) The costs of any counseling and testing provided under subsection (e) by the secretary of health and environment shall be paid from amounts

appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

(g) When a court orders an adjudicated person to submit to a test for HIV or hepatitis B infection under this section, the withdrawal of the blood may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the test for HIV or hepatitis B infection nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices.

(h) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the results or information. Any violation of this section is a class C nonperson misdemeanor.

**History:** L. 2006, ch. 169, § 17; Jan. 1, 2007.

**Source or Prior Law:**  
38-1692.